

Kootenai County Department of Legal Services
John A. Cafferty, Legal Counsel, ISB # 5607
Post Office Box 9000
Coeur d'Alene, ID 83816-9000
Phone: 208-446-1620
Fax: 208-446-1621

COPY

Attorney for Kootenai County
Coeur d'Alene Airport

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Applications of)	WT DOCKET NO. 02-179
)	
RESORT AVIATION SERVICES, INC.)	
)	
For Renewal of Aeronautical Advisory)	
Station WYT9, Coeur d'Alene Airport,)	MOTION FOR PROTECTIVE
Hayden, Idaho)	ORDER
)	
and)	
)	
KOOTENAI COUNTY COEUR)	
D'ALENE AIRPORT)	
)	
For a New Aeronautical Advisory)	
Station at Coeur d'Alene Airport,)	
Hayden, Idaho)	
_____)	

COMES NOW, Kootenai County Coeur d'Alene Airport, by and through its attorney of record, John A. Cafferty, Kootenai County Department of Legal Services, and hereby moves this tribunal for its Order of Protection pursuant to 47 CFR §§ 1.313 and 1.319.

On November 22, 2002, Larry Booher was served with a subpoena issued by Administrative Judge Steinberg. A copy of said subpoena is attached hereto

On November 22, 2002, Larry Booher was served with a subpoena issued by Administrative Judge Steinberg. A copy of said subpoena is attached hereto as Exhibit A. The subpoena requests that Mr. Booher produce copies of "all invoices, sales, receipts, correspondence, commercial transactions, and related documents between you and your companies with Greg Delavan and or Waterwings, Inc. or Waterwings LLC between January 1, 1999, and November 1, 2002."

This court's order released July 2, 2002, states that the issues between Resort Aviation Services, Inc. and Kootenai County Coeur d'Alene Airport are designated for hearing on a consolidated proceeding before an FCC administrative law judge to resolve the following issues:

a. To determine which applicant would provide the public with better Unicom services based on the following considerations:

- (1) Location of the fixed-based operation and proposed radio station in relation to the landing area and traffic patterns;
- (2) Hours of operation;
- (3) Personnel available to provide Unicom service;
- (4) Experience of applicant and employees in aviation and aviation communication;
- (5) Ability to provide information pertaining to primary and secondary communications as specified in §87.257 of the Commission's rules;
- (6) Proposed radio system including control and dispatch points; and
- (7) The availability of the radio facilities to other fixed-based operations;

A copy of the court's order is attached hereto as Exhibit B.

The Notice of Deposition, dated November 11, 2002, is far different than the Subpoena. See Exhibit C attached hereto.

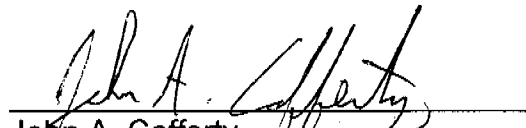
Kootenai County Coeur d'Alene Airport moves this court for a protective order pursuant to 47 CFR §1.313 (a) to wit, Kootenai County requests that the deposition of Larry Booher not be taken. It is clear from the subpoena served upon Mr. Booher on November 22, 2002, that the purpose of subpoenaing Mr. Booher by Resort Aviation Services, Inc. is simply to annoy and embarrass Applicant Kootenai County. The subpoena clearly states that the information which Applicant Resort Aviation Services, Inc. seeks will not help determine which applicant would provide the public with better Unicom service.

Kootenai County Coeur d'Alene Airport also moves for a protective order under 47 CFR §1.313(b). Applicant Kootenai County respectfully requests that if the deposition of Mr. Booher is allowed to proceed that Mr. Booher's testimony and the questions presented to him, be limited to information pertaining to Resort Aviation Services, Inc. and/or Kootenai County and the issues fixed by this court in its July 2, 2002 hearing designation order.

Finally, Kootenai County requests that if the deposition of Mr. Booher takes place, at any time, that this tribunal make itself available by telephone to rule on objections.

Oral argument is requested.

DATED this 25 day of November, 2002.


John A. Cafferty
Attorney at Law for Kootenai County
Coeur d'Alene Airport
P. O. Box 9000/LS
Coeur d'Alene, ID 83816-9000
FAX (208) 446-1621

CERTIFICATE OF SERVICE

I HEREBY certify that on this 25 day of Nov, 2002, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

☐ U.S. Mail
☐ HAND DELIVERED
☐ OVERNIGHT MAIL
☒ TELEFAX (FAX)

SCOTT REED
ATTORNEY AT LAW
P. O. BOX A
COEUR D'ALENE, ID 83816
FAX: (208) 765-5117

☐ U.S. Mail
☐ HAND DELIVERED
☐ OVERNIGHT MAIL
☒ TELEFAX (FAX)

DANA LEAVITT
ATTORNEY AT LAW
INVESTIGATIONS AND HEARINGS DIVISION FEDERAL
COMMUNICATIONS COMMISSION
445 12TH STREET S. W. - ROOM 3-B443
WASHINGTON, D. C. 20554
FAX (202) 418-2644

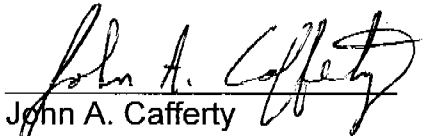
☐ U.S. Mail
☐ HAND DELIVERED
☐ OVERNIGHT MAIL
☒ TELEFAX (FAX)

ADMINISTRATIVE LAW JUDGE ARTHUR L. STEINBERG
FEDERAL COMMUNICATIONS COMMISSION
445 12TH STREET, S.W., ROOM 1-C861
WASHINGTON, D.C. 20054
FAX (202) 418-0195

☐ U.S. Mail
☐ HAND DELIVERED
☐ OVERNIGHT MAIL
☒ TELEFAX (FAX)

LARRY BOOHER
SOUTHFIELD FUEL, INC.
P. O. BOX 2811
HAYDEN LAKE, ID 83835

By:


John A. Cafferty

Attorney for Kootenai County Coeur d'Alene Airport

SUBPOENA

ORIGINAL - To be executed by the person who effects service and returned to the Secretary of the Commission.

UNITED STATES OF AMERICA

FEDERAL COMMUNICATIONS COMMISSION

IN THE MATTER OF

RESORT AVIATION SERVICES, INC.

Docket No. 02-179

KOOTENAI COUNTY COEUR D'ALENE AIRPORT

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To LARRY BOOHER, SOUTHFIELD FUEL, INC & HELI-PROP AIRCRAFT GREETINGS:

YOU ARE HEREBY ORDERED under penalty of law to appear before the Federal Communications Commission or

M&M COURT REPORTING

ROOM 205, BANK OF AMERICA BLDG

at 401 FRONT ST., COEUR D'ALENE, ID.

(Name and official title of person authorized to take depositions)

in the city of COEUR D'ALENE on the THURSDAY 5th day of DECEMBER, 2002

at 10:00 o'clock A.M., of that day, to testify in the above-captioned matter and to bring with you and to

produce then and there the following books, papers, and documents: COPIES OF ALL

INVOICES, SALES, RECEIPTS, CORRESPONDENCE, COMMERCIAL TRANSACTIONS

AND RELATED DOCUMENTS BETWEEN YOU AND YOUR COMPANIES WITH GREG

DEHAVAN AND/OR WATERWINGS, INC. OR WATERWINGS LLC BETWEEN

JANUARY 1, 1999 AND NOVEMBER 1, 2002

BY ORDER OF THE FEDERAL COMMUNICATIONS COMMISSION, this 21st day of

NOVEMBER, 2002

ADMINISTRATIVE JUDGE STEINBERG

(Official Title)

NOTICE: - Witness fees and mileage for attendance under this subpoena for service hereof are to be paid by the party at whose instance the witness is subpoenaed, and every copy of this summons for the witness must contain a copy of this notice.

Service of subpoenas may be made by any citizen of the United States over the age of 18 years who is competent to be a witness, and is not a party to or in any way interested in the proceeding.

PROOF OF SERVICE ON REVERSE SIDE.

EXHIBIT A

FCC Form 766
October 1985

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Applications of)	WT Docket No. 02-179
)	
RESORT AVIATION SERVICES, INC.)	File No. 0000628303
)	
For Renewal of Aeronautical Advisory Station)	
WYT9, Coeur d'Alene Airport, Hayden, Idaho)	
)	
and)	
)	
KOOTENAI COUNTY COEUR D'ALENE)	File No. 0000663272
AIRPORT)	
)	
For A New Aeronautical Advisory Station at)	
Coeur d'Alene Airport, Hayden, Idaho)	

HEARING DESIGNATION ORDER

Adopted: July 1, 2002

Released: July 2, 2002

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. On October 15, 2001, Resort Aviation Services, Inc. (Resort Aviation) filed the above-captioned application for renewal of aeronautical advisory (unicom) Station WYT9, Hayden, Idaho. Unicom stations provide information concerning flying conditions, weather, availability of ground services, and other information to promote the safe and expeditious operation of aircraft.¹ On November 5, 2001, Kootenai County Coeur d'Alene Airport (Kootenai County) filed the above-captioned application for a new unicom station at the same location. Both applicants propose to provide service at Coeur d'Alene Airport, where there is no control tower or FAA flight service station. Under Section 87.215(b) of the Commission's Rules, only one unicom station may be licensed at such airports.² Accordingly, the applicants are basically qualified, but these applications are mutually exclusive and must

¹ See 47 C.F.R. § 87.213(b)(1).

² 47 C.F.R. § 87.215(b). The rule states that "[a]t an airport which has a part-time or full-time control tower, RCO [control tower remote communications outlet] or FAA flight service station, the one unicom limitation does not apply" *Id.* Kootenai County argues that the limitation does not apply in this case because Coeur d'Alene Airport has a RCO station. See Letter, dated April 29, 2002, from Coeur d'Alene Airport General Manager Greg Delavan to Michael Connelly, Esq., Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau. For its part, Resort Aviation counters that the Coeur d'Alene Airport does not have a qualifying RCO. See Letter, dated April 29, 2002, from Scott W. Reed, Esq., to Michael Connelly, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau. At most airports, there are published frequencies for all communications related to the airport, including the common traffic advisory frequency (CTAF). See Reorganization and Revision of Part 87 of the Rules Governing the Aviation Services, *Notice of Proposed Rule Making*, PR Docket No. 87-214, 2 FCC Rcd 4069, 4070 ¶ 11 (1987). The one unicom per airport restriction has been lifted only at those airports where there is no need for a specified CTAF or the air traffic control facility frequency serves as the CTAF. *Id.* at 4070 ¶ 12. The published CTAF for Coeur d'Alene Airport is 122.80 MHz. That is the frequency on which the unicom operates. Therefore, the one unicom per airport restriction applies to Coeur d'Alene Airport.

therefore be designated for comparative hearing.³

2. Accordingly, IT IS ORDERED that, pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(e), and Section 1.221(a) of the Commission's Rules, 47 C.F.R. § 1.221(a), the above-captioned applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING before an FCC Administrative Law Judge to resolve the following issues:⁴

a. To determine which applicant would provide the public with better unicom service based on the following considerations:

- (1) location of the fixed-based operation and proposed radio station in relation to the landing area and traffic patterns;
- (2) hours of operation;
- (3) personnel available to provide unicom service;
- (4) experience of applicant and employees in aviation and aviation communications;
- (5) ability to provide information pertaining to primary and secondary communications as specified in Section 87.257 of the Commission's Rules;
- (6) proposed radio system including control and dispatch points; and
- (7) the availability of the radio facilities to other fixed-based operators;

b. To determine, in light of the evidence presented, which application, if any, should be granted to best serve the public interest, convenience, and necessity.

3. IT IS FURTHER ORDERED that the burden of proceeding with the introduction of evidence with respect to all the issues listed here shall be upon Resort Aviation and Kootenai County with respect to their applications.⁵

³ See 47 C.F.R. § 1.945(f). Although the parties had settlement discussions prior to the release of this hearing designation order, they were unable to resolve their mutual exclusivity. See Letter, dated May 9, 2002, from Scott W. Reed, Esq., counsel for Resort Aviation Services, Inc., and John Cafferty, Esq., counsel for Kootenai County Coeur d'Alene Airport, to John Schauble, Esq., Chief, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

⁴ We will not designate an issue to determine whether Resort Aviation should receive a renewal expectancy for its operation during the prior license term. There does not appear to be any basis in the Commission's Rules or in precedent for the award of a renewal expectancy for an incumbent unicom operator. In previous hearing designation orders involving unicom stations, the Commission has not designated a renewal expectancy issue. See *Great Western Aviation, Inc., Hearing Designation Order*, 16 FCC Rcd 18061 (WTB PSPWD 2001); *Branstine Flying Service, Inc., Hearing Designation Order*, 6 FCC Rcd 2787 (PRB 1991); *J.W. Miller Aviation, Inc., Hearing Designation Order*, 6 FCC Rcd 2151 (PRB 1991). The Commission's Rules currently do not authorize the award of a renewal expectancy for unicom stations. But see Review of Part 87 of the Commission's Rules Concerning the Aviation Service, *Notice of Proposed Rule Making*, WT Docket 01-289, 16 FCC Rcd 19005, 19024 ¶ 49 (2001) (seeking comment on whether to provide unicom licensees a renewal expectancy). If a party wishes to submit evidence demonstrating that Resort Aviation had an unusually good or unusually poor record during the prior license term, or that Resort Aviation violated the Commission's Rules during the prior license term, that party must first file a motion to enlarge issues with the presiding administrative law judge. See 47 C.F.R. § 1.229.

⁵ See 47 C.F.R. § 1.254.

4. IT IS FURTHER ORDERED that, to avail themselves of the opportunity to be heard, the applicants, Resort Aviation and Kootenai County, must each file with the Commission, within 20 days of the mailing of this Hearing Designation Order, a written notice of appearance in triplicate, stating their intentions to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order, in accordance with Sections 1.221(c), (f) and (g) of the Commission's Rules, 47 C.F.R. § 1.221(c), (f), (g). The written notice of Resort Aviation must be accompanied by a processing fee of \$9,020.00.⁶ Because it is a governmental entity, Kootenai County is exempt from the processing fee.⁷

5. IT IS FURTHER ORDERED that the Chief, Enforcement Bureau is made a party to the proceeding.

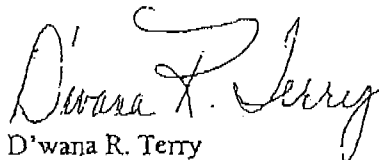
6. IT IS FURTHER ORDERED that the Commission's Reference Information Center SHALL SEND a copy of this Order, via Certified Mail - Return Receipt Requested, to Resort Aviation Services, Inc., c/o Scott W. Reed, Esq., 401 Front Avenue - Suite 205, Post Office Box A, Coeur d'Alene, Idaho 83816, and to Kootenai County Coeur d'Alene Airport, 11401 Airport Drive, Building 27, Hayden Lake, Idaho 83835.

7. IT IS FURTHER ORDERED that the Secretary of the Commission SHALL CAUSE to have this *Hearing Designation Order* or a summary thereof published in the Federal Register.

8. The time and place of the comparative hearing will be specified in a subsequent Order.

9. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION



D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

⁶ 47 C.F.R. § 1.1104.

⁷ 47 C.F.R. § 1.1114(f).

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of Applications of)
)
RESORT AVIATION SERVICES,)
INC.)
)
For Renewal of Aeronautical Advisory)
Station WYT9, Coeur d'Alene Airport,)
Hayden, Idaho.)
)
and)
)
KOOTENAI COUNTY)
COEUR D'ALENE AIRPORT)
)
For a New Aeronautical Advisory)
Station at Coeur d'Alene Airport,)
Hayden, Idaho.)

WT DOCKET NO. 02-179

NOTICE OF DEPOSITIONS OF
PHILLIP CUMMINGS, LARRY
BOOHER AND GREG DELAVAN

INCOMING MAIL

RECEIVED 11/12/02

ROUTE TO: DC

☒ CC: Airport

☒ CALENDAR: 11-29-02 11-29-02

☐ FILE NO. 1010.1412

TO: Kootenai County Coeur d'Alene Airport and your attorney
John Cafferty

Please take notice that the depositions of Phillip Cummings,
Operations Manager of Coeur d'Alene Airport, Larry Booher, owner and
operator of Southfield Fuel, Inc. and HeliProp Aircraft, Inc. and Greg
Delavan, Airport Manager of Coeur d'Alene Airport, will be taken on
Thursday, December 5, 2002 in the offices of Scott W. Reed, Bank of
America Building, Room 205, 401 Front Street, Coeur d'Alene, Idaho
commencing at 9:00 a.m., P.S.T.

Depositions will be taken at the following times:

NOTICE OF DEPOSITION

EXHIBIT C

9:00 o'clock a.m. Phillip Cummings

10:00 o'clock a.m. Larry Booher

1:30 o'clock p.m. Greg Delavan

The depositions will be taken by M & M Court Reporting Services, Inc., 816 Sherman Avenue, Coeur d'Alene, Idaho (208) 765-1700, certified court reporter.

The subject matter upon which the depositions of Phillip Cummings and Greg Delavan will be taken will include the applications of Resort Aviation Services, Inc. and Kootenai County Coeur d'Alene Airport for Unicom licenses, the interrogatories, requests for productions and answers and responses thereto and all aspects and events relating to the relationship between Kootenai County Coeur d'Alene Airport and Resort Aviation Services, Inc. from January 1, 1998 to date, the nature of the operations of Coeur d'Alene Airport and their knowledge, experience and competence with Unicom operations and their expectations toward becoming an authorized Unicom operator at the Coeur d'Alene Airport if the results of these proceedings so allow.

The subject matter upon which witness Larry Booher is to be examined shall include the nature of operations of Larry Booher, Southfield

Fuel, Inc. and HeliProp Aircraft, Inc. on the Coeur d'Alene Airport, the relationship of said person and businesses with Coeur d'Alene Airport Manager Greg Delavan and other employees of Kootenai County at the airport, their knowledge, experience and competence with Unicom operations and their expectations toward becoming an authorized Unicom operator at the Coeur d'Alene Airport if the results of these proceedings so allow.

You are invited to attend.

Dated this 18th day of November, 2002.

Scott W. Reed
Attorney for Resort Aviation
Services, Inc.
P. O. Box A
Coeur d'Alene, Idaho 83816
(208) 664-2161
Fax: (208) 765-5117

I hereby certify that a true and exact copy of the foregoing was faxed this 18th day of November, 2002 to:

JOHN CAFFERTY, ESQ.
KOOTENAI COUNTY DEPT. OF
LEGAL SERVICES
451 GOVERNMENT WAY
P. O. BOX 9000
COEUR D'ALENE, IDAHO 83816-9000

NOTICE OF DEPOSITION

DANA LEAVITT
ATTORNEY AT LAW
INVESTIGATIONS AND HEARINGS DIVISION
FEDERAL COMMUNICATIONS COMMISSION
445 12TH STREET S. W. - ROOM 3-B443
WASHINGTON, D. C. 20554
FAX (202) 418-2644

ADMINISTRATIVE LAW JUDGE
ARTHUR I. STEINBERG
FEDERAL COMMUNICATIONS
COMMISSION
445 12TH STREET, S.W., ROOM 1-C861
WASHINGTON, D.C. 20054
FAX (202) 418-0195

and mailed by first class mail, postage prepaid to:

LARRY BOOHER
SOUTHFIELD FUEL, INC.
P. O. BOX 2811
HAYDEN LAKE, IDAHO 83835

MODE = MEMORY TRANSMISSION

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-KOOTENAI CO LEGALSVC/PERS-

***** -2084461621 - ***** 208 664 5267- *****

Kootenai County Department of Legal Services
 John A. Cafferty, Legal Counsel, ISB # 5607
 Post Office Box 9000
 Coeur d'Alene, ID 83816-9000
 Phone: 208-446-1620
 Fax: 208-446-1621

Attorney for Kootenai County
 Coeur d'Alene Airport

ORIGINAL

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On November 22, 2002, Larry Booher was served with a subpoena issued
 by Administrative Judge Steinberg. A copy of said subpoena is attached hereto

ORIGINAL

MODE = MEMORY TRANSMISSION

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-KOOTENAI CO LEGALSVC/PERS-

***** -2084461621 - ***** 208 664 5267- *****

Kootenai County Department of Legal Services
 John A. Cafferty, Legal Counsel, ISB # 5607
 Post Office Box 9000
 Coeur d'Alene, ID 83816-9000
 Phone: 208-446-1620
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Attorney for Kootenai County
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ORIGINAL

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ORIGINAL

MODE = MEMORY TRANSMISSION

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-KOOTENAI CO LEGALSUC/PERS-

***** -2084461621 - ***** 208 664 5267- *****

Kootenai County Department of Legal Services
 John A. Cafferty, Legal Counsel, ISB # 5607
 Post Office Box 9000
 Coeur d'Alene, ID 83816-9000
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Attorney for Kootenai County
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